

State of Arizona
Senate
Forty-seventh Legislature
First Regular Session
2005

CHAPTER 173

SENATE BILL 1282

AN ACT

PROVIDING FOR DELAYED REPEAL OF SECTION 3-237, ARIZONA REVISED STATUTES; AMENDING TITLE 3, CHAPTER 2, ARTICLE 2, ARIZONA REVISED STATUTES, BY ADDING A NEW SECTION 3-237 AND SECTION 3-243; AMENDING SECTIONS 3-276, 3-584, 3-903, 3-906, 3-909, 3-910, 3-1303 AND 41-2706, ARIZONA REVISED STATUTES; RELATING TO AGRICULTURE AND LIVESTOCK.

(TEXT OF BILL BEGINS ON NEXT PAGE)

Be it enacted by the Legislature of the State of Arizona:

Section 1. Delayed repeal

Section 3-237, Arizona Revised Statutes, is repealed from and after August 31, 2006.

Sec. 2. Title 3, chapter 2, article 2, Arizona Revised Statutes, is amended by adding a new section 3-237, to read:

3-237. Label requirements; rules

THE DIRECTOR SHALL ADOPT RULES TO SPECIFY LABELING REQUIREMENTS FOR EACH CONTAINER OF AGRICULTURAL, VEGETABLE AND ORNAMENTAL PLANT SEED SOLD, OFFERED FOR SALE, EXPOSED FOR SALE OR TRANSPORTED IN THIS STATE FOR SOWING PURPOSES. THE LABELING REQUIREMENTS SHALL INCLUDE:

1. GERMINATION.
2. PURITY.
3. NOXIOUS WEED CONTENT.
4. PRECAUTIONARY STATEMENTS THE DIRECTOR CONSIDERS TO BE NECESSARY.
5. LABELER OR PACKAGER INFORMATION.
6. SEED ORIGIN.
7. OTHER ISSUES THE DIRECTOR CONSIDERS TO BE NECESSARY.

Sec. 3. Title 3, chapter 2, article 2, Arizona Revised Statutes, is amended by adding section 3-243, to read:

3-243. Seed labeling regulation; state preemption

THE REGULATION AND USE OF SEEDS ARE OF STATEWIDE CONCERN. THE REGULATION OF SEEDS PURSUANT TO THIS ARTICLE AND THEIR USE IS NOT SUBJECT TO FURTHER REGULATION BY A COUNTY, CITY, TOWN OR OTHER POLITICAL SUBDIVISION OF THIS STATE.

Sec. 4. Section 3-276, Arizona Revised Statutes, is amended to read:

3-276. Deficiencies in guaranteed analysis; penalties payable to consumer

A. If the analysis of any fertilizer material shows a deficiency in any constituent other than a primary plant nutrient of not more than ~~five per cent~~ THE INVESTIGATIONAL ALLOWANCE of the guaranteed total percentage of the constituent, the statement of the licensee, distributor or other person, as required by this article, is not false within the meaning of this article. When the deficiency exceeds ~~five per cent~~ THE INVESTIGATIONAL ALLOWANCE, the purchaser shall be entitled to a refund based on the percentage of the deficiency.

B. If the analysis of any commercial fertilizer shows a deficiency in the guaranteed analysis in any one primary plant nutrient, a penalty shall be assessed in accordance with the following provisions:

1. Total nitrogen: A penalty of three times the value of the deficiency, if the deficiency exceeds the investigational allowances.
2. Available phosphate: A penalty of three times the value of the deficiency, if the deficiency exceeds the investigational allowances.
3. Soluble potash: A penalty of three times the value of the deficiency, if the deficiency exceeds the investigational allowances.

1 C. The director shall establish by rule investigational allowances for
2 primary plant nutrients.

3 D. Nothing contained in this article shall prohibit any person from
4 appealing according to law.

5 E. All penalties assessed under this section shall be paid to the
6 consumer of the lot of fertilizer material represented by the sample analyzed
7 within three months after the date of notice from the department to the
8 licensee or other responsible person and receipts taken therefor and promptly
9 forwarded to the department. If the consumer cannot be found, the amount of
10 the penalty shall be paid to the department. The director shall deposit,
11 pursuant to sections 35-146 and 35-147, the penalty receipts in the state
12 general fund.

13 Sec. 5. Section 3-584, Arizona Revised Statutes, is amended to read:

14 3-584. Powers and duties of the council

15 A. The council shall:

16 1. Meet at least once during each calendar quarter and more frequently
17 on the call of the chairman, vice-chairman or any three members of the
18 council.

19 2. Annually elect a chairman from among its members.

20 3. Elect a secretary and a treasurer from among its members.

21 4. Establish an executive committee, consisting of the chairman,
22 secretary and treasurer. The executive committee shall act pursuant to
23 direction received from the full council, or if the situation arises, the
24 executive committee shall act and then bring the subject and ~~their~~ ITS action
25 before the full council at the next regular meeting of the council for review
26 and ratification.

27 5. Establish fees to be assessed within the limits prescribed in
28 section 3-587.

29 B. Programs and projects authorized under this article may include:

30 1. Cooperation in state, regional, national or international
31 activities with public or private organizations or individuals to assist in
32 developing and expanding markets and reducing the cost of marketing grain and
33 grain products.

34 2. Participation in research projects and programs to assist in
35 reducing fresh water consumption, developing new grain varieties, improved
36 production and handling methods, research and design of new or improved
37 harvesting and handling equipment.

38 3. Any program or project that the council determines appropriate to
39 provide education, publicity or other assistance to facilitate further
40 development of the Arizona grain industry.

41 C. The council may:

42 1. Adopt administrative rules necessary to promptly and effectively
43 administer this article.

44 2. Appoint subordinate officers and employees of the council,
45 prescribe their duties and fix their compensation.

1 3. Accept donations of monies, property, services or other assistance
2 from public or private sources for the purpose of furthering the objectives
3 of this article.

4 4. Investigate and prosecute in the name of this state any action or
5 suit to enforce the collection or ensure payment of the fees authorized and
6 to sue and be sued in the name of the council.

7 5. MAKE GRANTS TO RESEARCH AGENCIES FOR FINANCING APPROPRIATE STUDIES,
8 RESEARCH PROJECTS AND PROGRAMS TO ASSIST IN REDUCING FRESH WATER CONSUMPTION,
9 DEVELOPING NEW GRAIN VARIETIES, IMPROVED PRODUCTION AND HANDLING METHODS AND
10 RESEARCH AND DESIGN OF NEW OR IMPROVED HARVESTING AND HANDLING EQUIPMENT.

11 Sec. 6. Section 3-903, Arizona Revised Statutes, is amended to read:

12 3-903. Protected group of plants; botanical names govern;
13 categories of protected plants; power to add or remove
14 plants; annual hearing

15 A. The protected group of native plants shall include, and protected
16 native plants shall be, any plant or part of a plant, except, unless
17 otherwise specifically included, its seeds or fruit, which is growing wild on
18 state land or public land or on privately owned land without being propagated
19 or cultivated by human beings and which is included by the director on any of
20 the definitive lists of protected categories of protected native plants
21 described in this section. The director by definitive lists may divide any
22 protected category into subcategories which are to receive different
23 treatment under the rules adopted under this article to conserve or protect
24 such plants. In the preparation of each list of plants within a protected
25 category or subcategory the director shall list by botanical names all of
26 those protected plants which are to fall within the protection of that
27 category or subcategory. The botanical names of the listed plants govern in
28 all cases in the interpretation of this article and any rules adopted under
29 this article.

30 B. The director shall establish by rule the lists of plants in the
31 following categories of protected native plants:

32 1. Highly safeguarded native plants to be afforded the exclusive
33 protections, including the use of scientific or threatened collection and
34 salvage permits, provided this category in this chapter. This category
35 includes those species of native plants and parts of plants, including the
36 seeds and fruit, whose prospects for survival in this state are in jeopardy
37 or which are in danger of extinction throughout all or a significant portion
38 of their ranges, and those native plants which are likely within the
39 foreseeable future to become jeopardized or in danger of extinction
40 throughout all or a significant portion of their ranges. This category also
41 includes those plants resident to this state and listed as endangered,
42 threatened, or category 1 in the federal endangered species act of 1973 (P.L.
43 93-205; 87 Stat. 884; 16 United States Code sections 1531 et seq.), as
44 amended, and any regulations adopted under that act.

1 2. Salvage restricted native plants to be afforded the exclusive
2 protections involving the use of salvage permits, tags and seals provided in
3 this chapter. This category includes those native plants which are not
4 included in the highly safeguarded category but are nevertheless subject to a
5 high potential for damage by theft or vandalism.

6 ~~3. Export restricted plants to be afforded the exclusive protections,~~
7 ~~involving the use of safeguards against their overdepletion through~~
8 ~~interstate sale or shipment, provided in this chapter. This category~~
9 ~~includes those protected native plants which are not included in the highly~~
10 ~~safeguarded category but are nevertheless subject to overdepletion if their~~
11 ~~exportation from this state is permitted.~~

12 4. 3. Salvage assessed native plants to be afforded the exclusive
13 protections, involving the use of salvage tags and seals and annual salvage
14 permits, provided in this chapter. This category includes those native
15 plants which are not included in either the highly safeguarded or salvage
16 restricted categories but nevertheless have a sufficient value if salvaged to
17 support the cost of salvage tags and seals.

18 5. 4. Harvest restricted native plants to be afforded the exclusive
19 protections involving the use of harvest permits and wood receipts provided
20 in this chapter. This category includes those native plants which are not
21 included in the highly safeguarded category but are subject to excessive
22 harvesting or overcutting because of the intrinsic value of their
23 by-products, fiber or woody parts.

24 C. The director by rule may add or remove a native plant to or from
25 the protected group or any of the categories of protected native plants.

26 D. The director shall hold a public hearing on native plants at least
27 every twelve months after giving notice as required by section 3-912,
28 subsection B.

29 Sec. 7. Section 3-906, Arizona Revised Statutes, is amended to read:

30 3-906. Collection and salvage of protected plants; procedures,
31 permits, tags and seals; duration; exception

32 A. Except as provided in this chapter a person shall not take,
33 transport or ~~have in his possession~~ POSSESS any protected native plant taken
34 from the original growing site in this state without ~~having in his possession~~
35 POSSESSING a valid permit issued by the division. The division shall issue
36 permits in either a name or business name. A permit to take, transport or
37 possess native plants is nontransferable, except that a permittee, by
38 subcontract or otherwise, may allow its agents to work under the permit if
39 the permittee remains primarily responsible for the actions of persons acting
40 under his expressed or implied authority.

41 B. IN ADDITION TO THE REQUIREMENTS PRESCRIBED BY THIS SECTION, A
42 PERSON WHO MOVES OR SALVAGES A SAGUARO CACTUS (CEREUS GIGANTEUS) THAT IS MORE
43 THAN FOUR FEET TALL, FROM OTHER THAN ITS ORIGINAL GROWING LOCATION, MUST
44 PURCHASE A PERMIT, TAG AND SEAL FROM THE DEPARTMENT. A PERSON MAY ONLY MOVE
45 A SAGUARO CACTUS WITHOUT OBTAINING A PERMIT, TAG AND SEAL IF THE PERSON

1 MAINTAINS DOCUMENTATION OF A PREVIOUS LEGAL MOVEMENT OR IF THE DEPARTMENT HAS
2 RECORD OF A PREVIOUS LEGAL MOVEMENT OF THE CACTUS BY THE PERSON. SAGUARO
3 CACTI THAT ARE PROPAGATED BY HUMANS ARE EXEMPT FROM THE REQUIREMENTS OF THIS
4 SUBSECTION.

5 ~~B.~~ C. Permits applicable to highly safeguarded native plants may be
6 issued only for collection for scientific purposes or for the noncommercial
7 salvage of highly safeguarded native plants whose existence is threatened by
8 intended destruction, or by their location or by a change in land usage, and
9 if the permit may enhance the survival of the affected species.

10 ~~C.~~ D. Permits issued for the salvage of salvage assessed native
11 plants shall be issued for a period of one calendar year without respect to
12 the land from which the plants will later be taken. The associated tags and
13 seals shall be issued individually or in bulk on payment of any fees required
14 under section 3-913, subsection A, without respect to the specific plants for
15 which they will be used. All such tags and seals remain valid for use in
16 subsequent years as long as the permit is renewed.

17 ~~D.~~ E. The division shall provide tags and seals for each permit
18 issued for taking, transporting or possessing highly safeguarded, salvage
19 restricted or ~~salvaged~~ SALVAGE assessed native plants. The director by rule
20 shall establish procedures and forms for permits, tags and seals to be issued
21 for the collection and salvage of highly safeguarded native plants and the
22 salvage of salvage restricted and salvage assessed native plants. The
23 director by rule may establish and modify the form and character of the tags
24 and seals described in this section. All such tags and seals shall be
25 attached to the plants at the time of taking and before transporting. It is
26 unlawful to remove a tag or seal from a protected native plant that has been
27 taken and tagged pursuant to this article before the plant has been
28 transplanted at its designated site. A tag or seal may be removed only by a
29 designated agent of the division or by the owner of the plant.

30 ~~E.~~ F. This section does not apply to the transporting of protected
31 native plants by a landowner or his agent from one of his properties to
32 another if the plants are not offered for sale.

33 Sec. 8. Section 3-909, Arizona Revised Statutes, is amended to read:

34 3-909. Shipment of plants; exhibition of permit and certificate
35 of inspection to carrier; sale of highly safeguarded
36 plants

37 A. No person or common carrier may transport a plant, or any part of a
38 plant, belonging to the protected group, nor receive or possess a protected
39 native plant for transportation within or without this state, except for
40 manufactured wood articles, unless the person offering the plant for shipment
41 exhibits to the person or common carrier a valid written permit for the
42 transportation of the plant or part of a plant and has securely and properly
43 attached a valid required native plant tag and seal to the plant. If for
44 transport without the state, the plant shall also bear a certificate of
45 inspection by the department. All protected native plant species or

1 varieties, not grown in Arizona and imported into this state, shall be
2 transported directly to a department field office at which a movement permit
3 and seals must be purchased before proceeding to the final destination.

4 B. Plants of the protected group that are shipped into this state
5 shall be accompanied by all permits, tags and seals required by the exporting
6 state or country.

7 C. It is unlawful for a person to commercially sell or offer for
8 commercial sale in interstate commerce any highly safeguarded native plant or
9 in the course of interstate commercial activity to deliver, receive, carry,
10 transport or ship by any means any such plant in furtherance of a commercial
11 sale or offer for commercial sale.

12 ~~D. The seller of export restricted native plants shall make a good~~
13 ~~faith effort to sell the export restricted native plants within the state~~
14 ~~prior to export.~~

15 Sec. 9. Section 3-910, Arizona Revised Statutes, is amended to read:

16 3-910. Compiling information; reports; native plant surveys;
17 investigations; technical advisory board

18 A. At the request of any person, including a state or federal agency,
19 and if the person provides the department with a suitable description of the
20 land in question, the director may enter into agreements with any such person
21 to conduct native plant surveys on the applicable private or state land.
22 Unless the survey is limited to the simple determination of whether or not
23 protected species exist on the land, the department may collect fees as
24 reimbursement for the services which are reasonably based on the time factor,
25 vegetation density and acreage. Notwithstanding section 35-148, subsection
26 A, the director shall deposit any monies received under this subsection in
27 the fund established under BY section 3-913.

28 B. The director by rule may require written reports from persons
29 engaged in salvaging or harvesting protected native plants as to the location
30 and quantities of protected native plants and their parts which have been
31 salvaged or harvested under this chapter. The director by rule may make the
32 filing of these reports a condition to the issuance or renewal of any
33 permits, tags, seals or receipts provided for in this chapter.

34 C. The department may conduct investigations of the status of all
35 species of native plants in order to develop information relative to
36 population distribution, habitat needs, limiting factors and other biological
37 data and to determine measures and requirements, including transplantation
38 and propagation, necessary for their conservation or survival. If protected
39 native plants or significant communities of such plants are vulnerable to
40 depletion from their collection or harvest as a commercial resource, the
41 department may collect statistical information and conduct investigations to
42 determine what harvests are sustainable without depleting the plants or plant
43 communities or destroying significant habitat provided by such plants or
44 plant communities.

1 D. The director may appoint, utilize and contract with a technical
2 advisory board, SERVING WITHOUT COMPENSATION, to annually review the ~~numbers~~
3 ~~of native plants harvested and salvaged~~ NUMBER OF PERMITS AND TAGS ISSUED in
4 order to assess whether plant species, communities or populations are being
5 depleted, ~~to~~ AND recommend revisions to the protected PLANT categories ~~and to~~
6 ~~recommend priorities for additional monitoring and scientific study.~~ The
7 board shall consist of representatives of the scientific community, including
8 the botanical and zoological fields, and representatives from the native
9 plant industries, including salvage, revegetation, propagation, landscaping
10 and harvesting concerns.

11 Sec. 10. Section 3-1303, Arizona Revised Statutes, is amended to read:

12 3-1303. Driving livestock from range without consent of owner;
13 classification

14 When livestock of a resident of the state is intentionally driven off
15 its range BY ANY PERSON, without consent of the owner, ~~by the drover of any~~
16 ~~herd or drove, the drover and every person engaged in the care or management~~
17 ~~of such herd or drove,~~ THE PERSON is guilty of a class 5 felony.

18 Sec. 11. Section 41-2706, Arizona Revised Statutes, is amended to
19 read:

20 41-2706. Applicability of chapter

21 A. This chapter applies to the solicitation of grants initiated after
22 August 6, 1999.

23 B. This chapter does not apply to:

24 1. Any grant program that was exempt from chapter 23, article 3 of
25 this title and for which administrative rules establishing grant solicitation
26 procedures were adopted pursuant to chapter 6 of this title before August 6,
27 1999.

28 2. The Arizona board of regents and schools, colleges, institutions
29 and universities under its control if the Arizona board of regents adopts
30 rules or policies governing the award of grants that encourage as much
31 competition as practicable.

32 3. Grants made by the cotton research and protection council for
33 research programs related to cotton production or protection.

34 4. Grants made by the Arizona iceberg lettuce research council for
35 research programs under section 3-526.02, subsection C, paragraph 3 or 5.

36 5. Grants made by the Arizona citrus research council for research
37 programs under section 3-468.02, subsection C, paragraph 3 or 5.

38 6. GRANTS MADE BY THE ARIZONA GRAIN RESEARCH AND PROMOTION COUNCIL FOR
39 RESEARCH PROJECTS AND PROGRAMS UNDER SECTION 3-584, SUBSECTION C,
40 PARAGRAPH 5.

41 Sec. 12. Rule making; seed labeling; effective date

42 A. The director of the department of agriculture shall adopt rules to
43 specify labeling requirements for each container of agricultural, vegetable
44 and ornamental plant seed sold, offered for sale, exposed for sale or
45 transported in this state for sowing purposes. When adopted, the rules

1 supersede the requirements of section 3-237, Arizona Revised Statutes, in
2 effect before September 1, 2006. The labeling requirements shall include:

- 3 1. Germination.
- 4 2. Purity.
- 5 3. Noxious weed content.
- 6 4. Precautionary statements the director considers to be necessary.
- 7 5. Labeler or packager information.
- 8 6. Seed origin.
- 9 7. Other issues the director considers to be necessary.
- 10 8. The rules adopted pursuant to this section shall take effect from
11 and after August 31, 2006.

12 Sec. 13. Delayed repeal

13 Section 12 of this act, relating to seed labeling rules, is repealed
14 from and after August 31, 2006.

15 Sec. 14. Effective date

16 Section 3-237, Arizona Revised Statutes, as added by this act, is
17 effective from and after August 31, 2006.

APPROVED BY THE GOVERNOR APRIL 22, 2005.

FILED IN THE OFFICE OF THE SECRETARY OF STATE APRIL 22, 2005.

Passed the House April 12, 20 05

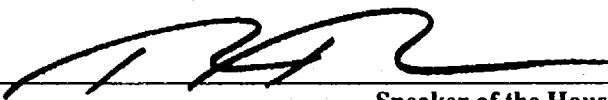
Passed the Senate February 17, 20

by the following vote: 57 Ayes,

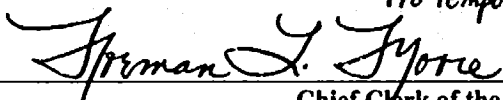
by the following vote: 30 Ayes,

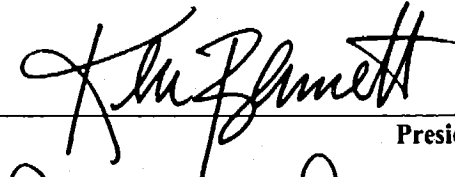
2 Nays, 1 Not Voting

0 Nays, 0 Not Voting

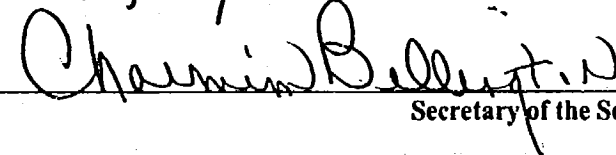


Speaker of the House
Pro Tempore


Chief Clerk of the House



President of the Senate


Secretary of the Senate

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF GOVERNOR

This Bill was received by the Governor this

_____ day of _____, 20____,

at _____ o'clock _____ M.

Secretary to the Governor

Approved this _____ day of

_____, 20____,

at _____ o'clock _____ M.

Governor of Arizona

S.B. 1282

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF SECRETARY OF STATE

This Bill was received by the Secretary of State

this _____ day of _____, 20____,

at _____ o'clock _____ M.

Secretary of State

SENATE CONCURS IN HOUSE AMENDMENTS
AND FINAL PASSAGE

Passed the Senate April 19, 2005,

by the following vote: 27 Ayes,

1 Nays, 2 Not Voting

Ken Bennett
President of the Senate
Channing Bellinger
Secretary of the Senate

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF GOVERNOR

This Bill was received by the Governor this

19th day of April, 2005

at 3:41 o'clock P. M.

Jennifer Harbo
Secretary to the Governor

Approved this 22 day of

April, 2005,

at 1:55 o'clock P. M.

J. N. ...
Governor of Arizona

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF SECRETARY OF STATE

This Bill was received by the Secretary of State

this 22 day of April, 2005

at 3:53 o'clock P. M.

Janice K. Brewer
Secretary of State

S.B. 1282